IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6805 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

NATIONAL INSURANCE CO.LTD.

Versus

ASHIK SAHABUDDIN KHOJA

Appearance:

1. First Appeal No. 6805 of 1999

MS MEGHA JANI for Petitioners No. 1-2

MR SURESH M SHAH for Respondent No. 1 and 2

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.H.KADRI

Date of decision: 08/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard learned counsel for the respective parties. The appeal is admitted. Learned counsel, Mr. M.S. Shah, waives service of notice in the appeal and appears for respondents Nos.1 and 2-original claimants.

2. On a joint request of learned counsel for the appellants and learned counsel for respondents Nos.1 and 2 (original claimants), this appeal is taken up for final hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, at the instance of the insurer and the owner of the vehicle which was involved in the accident. The appellants herein challenge the judgment and award passed by the Motor Accident Claims Tribunal, Kachchh, Motor Accident Claim Petition No.230 of 1997. It is pertinent to note that the said award is passed at Exh.6/D in the pending claim petition filed under Section 166 of the Act.

3.1 Various contentions were raised by the learned counsel for the appellants, pertaining to the Tribunal granting the application under Section 163A of the Act while the main claim petition under Section 166 of the Act was pending.

3.2 The learned counsel for the respondents Nos.1 and 2 [original claimants] makes a statement at the bar that the said claimants shall withdraw the main claim petition filed and pending under Section 166 of the Act. The said respondents [original claimants] are directed to abide by the said statement.

4. As a result of the effective withdrawal of the main claim petition under Section 166 of the Act, it becomes apparent that the impugned award under Section 163A of the Act would be the only award passed in favour of the original claimants, and consequently it would be urged that the same is not legally sustainable award on various grounds. However, with a view to save time in the ultimate decision which may be rendered in favour of the respondents Nos.1 and 2 [original claimants], a consensus has been arrived at between the learned counsel for the parties.

5. On the basis of the aforesaid consensus, it is directed that the impugned judgment and award is quashed and set aside, and the matter is remanded back to the Tribunal for a fresh decision on merits and in accordance with law. The Tribunal shall hear and dispose of the

remanded matter as expeditiously as possible. It is clarified that the parties thereto shall be at liberty to adduce such evidence as they may require to support their respective contentions.

6. This appeal is, therefore, allowed to the aforesaid extent with no order as to costs.

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(swamy)